

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
March 20, 2007 Session

STATE OF TENNESSEE v. GREG SOUTHALL

Appeal from the Circuit Court for Maury County
No. 16081 Stella L. Hargrove, Judge

No. M2006-01738-CCA-R3-CD - Filed June 25, 2007

The defendant, Greg Southall, was charged with possession of one-half gram or more of cocaine with the intent to sell and possession of marijuana. The trial court granted the defendant's motion to suppress the drugs, finding that the search of the defendant's vehicle was unconstitutional. The state appeals the suppression. We hold that suppression was proper, and we affirm the trial court's judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which THOMAS T. WOODALL and J.C. McLIN, JJ., joined.

Robert E. Cooper, Jr., Attorney General and Reporter; Brent C. Cherry, Assistant Attorney General; T. Michel Bottoms, District Attorney General; and Brent A. Cooper, Assistant District Attorney General, for the appellant, State of Tennessee.

William C. Barnes, Jr., Columbia, Tennessee, for the appellee, Greg Southall.

OPINION

During a drug investigation involving a confidential informant, Officer David Stanfill of the Maury County Sheriff's Department obtained a warrant to search the residence of the defendant at 481 Southport Road, along with "any and all outbuildings and vehicles" in the defendant's possession or control. Officer Stanfill testified at the suppression hearing that he executed the search warrant on August 9, 2005. He said that on the afternoon of August 9, he was informed by another officer who was monitoring the Southport Road residence that the defendant had left the residence that morning and had not returned. Officer Stanfill said he was aware that the defendant had another residence. He said he was on his way to the second residence when he saw the defendant driving. He said he initiated a traffic stop of the defendant "to detain him to take him back to the residence to execute the search warrant." Officer Stanfill said that he told the defendant he had a search warrant and that he searched the vehicle the defendant was driving. He said he found about a quarter

ounce of crack cocaine and a quarter ounce of marijuana under the horn cover of the car's steering wheel.

Officer Stanfill testified that he did not stop the defendant because of any traffic violation. He said that he did not have an arrest warrant, that the drugs were not found in plain view, and that he did not obtain consent to search the defendant's car. He said he relied on the search warrant for authority to search the car. He said that at the time that he stopped and searched the defendant's car, officers had not yet searched the Southport Road residence. When they searched the residence later, no drugs were found in it. He acknowledged that the affidavit attached to the warrant states that the confidential informant bought drugs at 481 Southport Road and makes no mention of drugs being bought from or seen in a vehicle.

The trial court granted the defendant's motion to suppress, finding that the search warrant did not give Officer Stanfill the right to stop and seize the defendant and search his vehicle on the side of the road. The state appeals this order, contending that the search was valid because the search warrant specifically authorized officers to search any vehicle in the defendant's possession. The defendant counters that the search warrant cannot be read so broadly as to permit the search of a vehicle that was not specifically mentioned in the affidavit. He contends that the trial court properly suppressed the search of the vehicle and the resulting evidence.

We first note that a trial court's factual findings on a motion to suppress are conclusive on appeal unless the evidence preponderates against them. State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996); State v. Jones, 802 S.W.2d 221, 223 (Tenn. Crim. App. 1990). Questions about the "credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." Odom, 928 S.W.2d at 23. The application of the law to the facts as determined by the trial court is a question of law which we review de novo on appeal. State v. Yeargan, 958 S.W.2d 626, 629 (Tenn. 1997).

The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures, and "article 1, section 7 [of the Tennessee Constitution] is identical in intent and purpose with the Fourth Amendment." State v. Downey, 945 S.W.2d 102, 106 (Tenn. 1997) (quoting Sneed v. State, 221 Tenn. 6, 423 S.W.2d 857, 860 (1968)). Subject only to a few specifically established and well-defined exceptions, a search must be conducted pursuant to a valid search warrant. See Coolidge v. New Hampshire, 403 U.S. 443, 454-55, 91 S. Ct. 2022, 2032, 29 L. Ed. 2d 564 (1971); State v. Watkins, 827 S.W.2d 293, 295 (Tenn. 1992). A search warrant must describe with particularity the place to be searched and the items to be seized, and it must be supported by an affidavit that establishes probable cause that the evidence sought is in the place to be searched. T.C.A. § 40-6-103; State v. Bostic, 898 S.W.2d 242, 245 (Tenn. Crim. App. 1994).

The search warrant in the present case describes the evidence sought as "crack cocaine, packaging material, paperwork, proceeds from the sale of crack cocaine, and any drug paraphernalia." The warrant describes the place to be searched as, "481 Southport Rd. being a yellow single family dwelling with the numbers 481 on a post on the front porch, and any and all

outbuildings and vehicles in Greg Southall, John and/or Jane Doe[']s possession and or control.” The affidavit sets forth the grounds for probable cause as follows:

With in the past 96 hours your affiant has purchased crack cocaine from Greg Southall at 481 Southport Rd. Your affiant met with a confidential informant, known as C.I. from this point on, at a predetermined location [where] the C.I. and the C.I.’s vehicle were searched for contraband and nothing was found. The C.I. was then armed with an audio listening device so the transaction could be heard live as it took place. The C.I. was given buy money and then followed to 481 Southport Rd. and was heard purchasing crack cocaine. The C.I. was then seen leaving the said address and was then followed back to a predetermined location [where] the C.I. did give your affiant crack cocaine. The C.I. made no other stops so your affiant believes that the crack cocaine came from Greg Southall at this said address.

Officer Stanfill, who was both the affiant and the person who ultimately executed the search warrant, stated that in searching the defendant’s vehicle, he relied on the authority of the search warrant. Therefore, our question in this appeal is whether the search warrant authorized the search of the defendant’s vehicle, which the defendant was driving but which was not located on the premises described in the search warrant when the search was conducted.¹

We agree with the trial court and the defendant that the search of the defendant’s vehicle was not authorized under the search warrant. Although the search warrant states that the place to be searched included any vehicles in the defendant’s possession or control, we conclude that this provision can only be read to include vehicles found on the property described in the search warrant at 481 Southport Road. A warrant authorizing the search of a building “presupposes that the building mentioned in the warrant to be searched would include outhouses, vehicles upon the premises, and other places, which are appurtenant to the described building and are under the control of persons named in the warrant.” Worden v. State, 197 Tenn. 340, 344, 273 S.W.2d 139, 141 (1954) (emphasis added). However, this authorization does not extend to vehicles that are not on the premises described in the search warrant. See Dolen v. State, 187 Tenn. 663, 667, 216 S.W.2d 351, 353 (1948). In Dolen, the defendant challenged the search of a vehicle that was on a road adjoining the property described by the search warrant. Our supreme court held that the vehicle search was invalid because “a warrant directing the search of a certain described parcel of real estate does not authorize the search of an automobile parked in front of that real estate, but outside its boundaries, on an adjoining road.” Id.

¹The state has not argued at the suppression hearing or on appeal that the search was justified by any exception to the warrant requirement, including that the search was incident to a lawful arrest. As previously noted, Officer Stanfill testified that he stopped the defendant under the authority of the search warrant and to execute the warrant, not in order to make an arrest. See State v. Crutcher, 989 S.W.2d 295, 301 n.8 (Tenn. 1999) (“We decline to hold that a search may be upheld as a search incident to arrest merely because a lawful custodial arrest ‘could have’ been made.”)

As the state points out, the search warrant in Dolen authorized, by its terms, a search of “all outbuildings or vehicles on the premises.” Id. at 664, 216 S.W.2d at 352 (emphasis added). In contrast, the warrant in the present case states that a search is to be conducted of all outbuildings and vehicles in the defendant’s “possession and or control.” However, the conclusion in Dolen was not premised on the language of the search warrant. Rather, the court relied on the statute providing that a search warrant must “‘particularly’ describe ‘the place to be searched,’” Id. at 668, 216 S.W.2d at 353, and on prior cases holding that a search warrant allowing the search of a building at described premises also authorizes the search of vehicles on that premises, Id. (citing Lawson v. State, 176 Tenn. 457, 143 S.W.2d 716 (1940); Seals v. State, 157 Tenn. 538, 11 S.W.2d 879 (1928)).

We hold that language in the search warrant purporting to permit a search of any outbuildings and vehicles in the defendant’s possession or control does not alter the rule that a search warrant authorizing the search of a building on described premises authorizes the search of other buildings and vehicles on that premises only. Because the search warrant at issue in the present case described the property to be search as the residence at 481 Southport Road, the warrant only authorized a search of property found on the premises of 481 Southport Road. It did not authorize the search of the defendant’s undescribed vehicle that was not located on the premises when the search warrant was executed. Cf. Reece v. State, 197 Tenn. 383, 373 S.W.2d 475 (1954) (holding that search of defendant’s vehicle was proper because it was located on the premises when officers began reading the search warrant, even though it was thereafter driven off the premises in an apparent attempt to avoid a search).

We conclude that the search of the defendant’s vehicle was not authorized by the search warrant and that the trial court did not err in suppressing the fruits of that search. Based on the foregoing and the record as a whole, we affirm the judgment of the trial court.

JOSEPH M. TIPTON, PRESIDING JUDGE